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Lim Hui Jin v CIMB Bank Bhd & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-01(IM)(NCVC)-179–05 OF 2017
UMI KALTHUM, ABDUL RAHMAN SEBLI AND ZALEHA YUSOF JJCA
31 JULY 2018

C

Criminal Law — Money laundering — Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 — Application for release of monies — Appellant's bank account frozen pursuant to freezing order under s 44(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the AMLATFA') — Before expiration of freezing order, seizure order was issued on appellant's bank account — Appellant filed originating summons for release of monies held/frozen and seized by respondents — Whether freezing and seizure orders had expired at the time originating summons was filed — Whether appellant's account should be released on expiration of freezing and seizure orders — Anti-Money Laundering and Anti-Terrorism Financing Act 2001 s 44(1) & (5) — Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), 44(5), 50(1), 52A, 54(3) & 56(1) — Federal Constitution art 13(1)

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Pursuant to a freezing order ('the freezing order') issued by the police under s 44(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the AMLATFA'), the appellant's CIMB Bank account ('the appellant's account') was frozen with effect from 24 June 2014. The AMLATFA was amended and with effect from 1 September 2014, it was known as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATEPUA'). Before the freezing order expired on 21 September 2014, a seizure order was issued by the public prosecutor on the appellant's account pursuant to s 50(1) of the AMLATEPUA. In the court below, the appellant by originating summons prayed for the following orders against the respondents: (a) the release of all monies together with all accrued interest in the appellant's account held/frozen and seized by the respondents; and (b) costs and other reliefs. The learned High Court judge dismissed the appellant's application, hence the present appeal. The issue was whether the appellant's account should be released on expiration of the freezing and seizure orders.

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Held, allowing the appellant's appeal with costs and setting aside the order of the High Court:

(1) Based on s 52A of the AMLATEPUA, the limitation period had expired on 23 June 2015, ie 12 months after the issuance of the freezing order on 24 June 2014, or latest by 19 September 2015, ie 12 months after the issuance of the seizure order on 11 September 2014. The seizure order had ceased to have effect by the time the present originating summons was filed by the appellant. In fact, by virtue of s 44(5) of both AMLATEPUA and AMLATFA, the appellant's account should have been released earlier, ie on 21 September 2014 (90 days after the issuance of the freezing order) (see paras 15 & 17).

(2) Section 50(1) of the AMLATEPUA must not be read in isolation. It must be read together with s 52A of the AMLATEPUA. Once the seizure order had expired by effluxion of time, there was nothing for the public prosecutor to vary or revoke. To hold otherwise would be to violate art 13(1) of the Federal Constitution which provided that no person shall be deprived of property save in accordance with law (see paras 23–24).

(3) Section 54(3) of the AMLATEPUA clearly did not apply. The operative words were 'For so long as a seizure of any property under this Act remains in force'. In the present case, the seizure order on the appellant's account was no longer in force as it had expired (see paras 26–28).

(4) In the present case, the appellant was not charged with an offence under s 4(1) of the AMLATEPUA or a terrorism financing offence after the expiration of the freezing and seizure orders. Nor did the public prosecutor apply for forfeiture of the monies in the appellant's account under s 56(1) of the AMALATEPUA. Thus, by virtue of s 52A of the AMLATEPUA, the freezing and seizure orders had ceased to have effect. It must follow that the appellant's account must be released on expiration of the orders (see paras 16, 33, 40 & 42).

[Bahasa Malaysia summary

Berikutan perintah pembekuan ('perintah pembekuan tersebut') yang dikeluarkan oleh polis di bawah s 44(1) Akta Pencegahan Pengubahan Wang Haram dan Pembiayaan Anti-Keganasan 20012001 ('AMLATFA'), akaun bank CIMB perayu ('akaun perayu') dibekukan berkuat kuasa dari 24 Jun 2014. AMLATFA dipinda dan berkuat kuasa dari 1 September 2014, ia dikenali sebagai Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 ('AMLATEPUA'). Sebelum perintah pembekuan tamat pada 21 September 2014, perintah perampasan dikeluarkan oleh pihak pendakwa ke atas akaun perayu berikutan kepada s 50(1) AMLATEPUA. Di bawah bawahan, perayu melalui saman pemula memohon untuk perintah-perintah berikut terhadap responden-responden: (a) melepaskan kesemua wang bersama dengan kesemua faedah yang terakru dalam akaun perayu dipegang/dibekukan dan dirampas oleh responden-responden; dan (b) kos dan relif-relif lain. Hakim

Mahkamah Tinggi yang bijaksana menolak permohonan perayu, maka rayuan ini. Isu adalah sama ada akaun perayu patut dilepaskan atas tamatnya perintah-perintah pembekuan dan perampasan.

Diputuskan, membenarkan rayuan perayu dengan kos dan mengetepikan perintah Mahkamah Tinggi:

(1) Berdasarkan s 52A AMLATEPUA, tempoh had masa telah tamat pada 23 Jun 2015, iaitu 12 bulan selepas pengeluaran perintah pembekuan pada 24 Jun 2014, atau terkini pada 19 September 2015, iaitu 12 bulan selepas pengeluaran perintah perampasan pada 11 September 2014. Perintah perampasan telah tamat mempunyai kesan apabila saman pemula ini difailkan oleh perayu. Sebenarnya, mengikut s 44(5) AMLATEPUA dan AMLATFA, akaun perayu patut dilepaskan terlebih dahulu, iaitu pada 21 September 2014 (90 hari selepas pengeluaran perintah pembekuan) (lihat perenggan 15 & 17).

(2) Seksyen 50(1) AMLATEPUA tidak boleh dibaca secara berasingan. Ia mesti dibaca bersama dengan s 52A AMLATEPUA. Apabila saja perintah perampasan telah tamat akibat luput masa, tidak terdapat apa-apa untuk pihak pendakwa mempelbagai atau membatalkan. Untuk memutuskan sebaliknya akan mencabuli perkara 13(1) Perlembagaan Persekutuan yang memperuntukkan bahawa tiada orang akan dinafikan terhadap hartanah kecuali mengikut undang-undang (lihat perenggan 23–24).

(3) Seksyen 54(3) AMLATEPUA jelas tidak terpakai. Perkataan-perkataan operatif adalah 'For so long as a seizure of any property under this Act remains in force'. Dalam kes ini, perintah perampasan ke atas akaun perayu tidak lagi berkuat kuasa kerana ia telah tamat (lihat perenggan 26–28).

(4) Dalam kes ini, perayu tidak dituduh dengan kesalahan di bawah s 4(1) AMLATEPUA atau kesalahan kewangan keganasan selepas tamatnya perintah-perintah pembekuan dan perampasan. Juga pihak pendakwa tidak memohon untuk perampasan wanag dalam akaun perayu di bawah s 56(1) AMALATEPUA. Oleh itu, mengikut s 52A AMLATEPUA, perintah-perintah pembekuan dan perampasan telah tamat untuk berkuat kuasa. Oleh akaun perayu mesti dilepaskan atas tamatnya perintah-perintah tersebut (lihat perenggan 16, 33, 40 & 42).]

Notes

For cases on money laundering in general, see 4(2) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 1834–1839.

Cases referred to

City Growth Sdn Bhd & Anor v The Government of Malaysia [2006] 1 MLJ 581; [2005] 7 CLJ 422, HC (refd)

Government of Malaysia v Mohamed Amin bin Hassan [1986] 1 MLJ 224; [1985] 1 LNS 79, SC (refd)

R v Sloan [1990] 1 NZLR 474, HC (refd)

Simplex Sdn Bhd v Mohd Samsol bin Muzer & Anor [2015] 9 MLJ 78, HC (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), 4(1)(a), 44(5), 50(1), (3), 52A, 54(3), 55, 55(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(aa), (1)(bb), 56, 56(1), (3)

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ss 44(1), (5)

Federal Constitution art 13(1)

Appeal from: Civil Suit No AA-24NCVC–226–05 of 2016 (High Court, Ipoh)

Rabinder Singh (Amir Faliq, Syahidah Ismail and Ng Jun Wei with him) (AmirFaliq & Syahidah) for the appellant.

Jeyanthi Kannaperan (Marina Nasution with her) (Shearn Delamore & Co) for the first respondent.

Muzila bt Mohamed Arsad (Senior Federal Counsel, Attorney General's Chambers) for the second, third and fourth respondents.

Abdul Rahman Sebli JCA (delivering judgment of the court):

[1] In the court below the appellant by originating summons prayed for the following orders against the respondents:

(a) the release of all monies together with all accrued interest in his CIMB Bank Account No 25164 ('the appellant's account') held/frozen and seized by the respondents; and

(b) costs and other reliefs.

[2] At the conclusion of the hearing, the learned High Court judge dismissed the appellant's application on the ground that he failed to prove his case on the balance of probabilities, hence the present appeal before us. Having heard arguments by both sides, we reserved judgment to a date to be fixed. We have now reached a unanimous decision and this is our judgment.

[3] First, the salient facts. Pursuant to a freezing order issued by the police

under s 44(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the AMLATFA'), the appellant's account was frozen with effect from 24 June 2014. Paragraph 3 of the freezing order expressly states that the order was valid for 90 days, which means it would cease to have effect on 21 September 2014 if the appellant was not charged with an offence under the AMLATFA or a terrorism financing offence, as the case may be. The 90-day period is prescribed by s 44(5) of the AMLATFA.

[4] The AMLATFA is now known as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLATEPUA') vide s 3 of the Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014 (Act A1467) with effect from 1 September 2014 (see PU(B)400/2014). Section 52A of the AMLATEPUA reads as follows:

> 52A Expiry of seizure order
>
> A seizure order made under this Act shall cease to have effect after the expiration of twelve months from the date of the seizure order, or where there is a prior freezing order, twelve months from the date of the freezing order, if the person against whom the order was made has not been charged with an offence under this Act.

[5] This new provision is not found in the AMLATFA. On 11 September 2014, that is ten days after the coming into force of the AMLATEPUA, and before the freezing order issued under s 44(1) of the AMLATFA expired on 21 September 2014, a seizure order was issued by the public prosecutor on the appellant's account pursuant to s 50(1) of the AMLATEPUA.

[6] The basis for the seizure order was that the monies in the appellant's account are the subject matter of an offence under s 4(1) of the AMLATEPUA allegedly committed by his mother, one Tan Hoo Eng, following Sg Bernam Police Report No 2950/14.

[7] Tan Hoo Eng has since been charged with 21 counts of money laundering under s 4(1)(a) of the AMLATEPUA. We were told that the criminal proceeding against Tan Hoo Eng is pending before the Sessions Court at Ipoh, Perak.

[8] There is no ambiguity in s 52A of the AMLATEPUA. What it means is that a seizure order issued under s 50(1) ceases to have effect in the following two situations:

(a) if the person from whom the property was seized has not been charged with an offence under the AMLATEPUA on expiration of the seizure order, which is 12 months from the date of the seizure order; or

A (b) if the person from whom the property was seized has not been charged with an offence under the AMLATEPUA after the expiration of a prior freezing order, if any, which is 12 months after the issuance of the freezing order.

B **[9]** In the present case, there was a prior freezing order issued on the appellant's account before it was seized on 11 September 2014. Therefore, the seizure order ceased to have effect on 23 June 2015. The legislative intent behind s 52A is clear, and that is for the release of the property to the person from whom it was seized if the person has not been charged with an offence C under the AMLATEPUA on expiration of the freezing or seizure order, whichever is earlier.

[10] Thus, by virtue of , the seizure order issued on the appellant's account D on 11 September 2014 expired on the following dates:

(a) on 23 June 2015, ie 12 months after the issuance of the freezing order on 24 June 2014; and

(b) on 10 September 2015, ie 12 months after the issuance of the seizure E order on 11 September 2014.

[11] When the present originating summons was filed on 5 May 2016, the respondents continued to freeze the appellant's account although the freezing and seizure orders had long ceased to have effect by reason of the fact that the F appellant had not been charged with an offence under the AMLATEPUA on expiration of these two orders.

[12] We note that both s 44(5) of the AMLATFA and s 44(5) of the AMLATEPUA limit the lifespan of a freezing order issued under s 44(1) to 90 G days only, unless the person against whom the freezing order was made has been charged with an offence under the AMLATFA or the AMLATEPUA or a terrorism financing offence before the order ceases to have effect. We reproduce below s 44(5) for ease of reference:

H (5) An order made under subsection (1) shall cease to have effect after ninety days from the date of the order, if the person against whom the order was made has not been charged with an offence under this Act or a terrorism financing offence, as the case may be.

I **[13]** On the face of it, there is a contradiction in terms between ss 44(5) and 52A of the AMLATEPUA. Whilst the former prescribes a lifespan of only 90 days for a freezing order, the latter prescribes a longer lifespan of 12 months from the date of a 'prior freezing order' for the purposes of computing the lifespan of a seizure order.

[14] Learned counsel for the respondents contended that s 52A of the AMLATEPUA does not apply retrospectively and that therefore the seizure order, which was issued pursuant to the freezing order dated 24 June 2014 (issued under s 44(1) of the AMLATFA) is not subject to the 12-month limitation period prescribed by s 52A.

[15] With due respect, we find no substance to the argument. The seizure order was effected on the appellant's account on 11 September 2014, well after the coming into force of s 52A on 1 September 2014. The limitation period therefore expired on 23 June 2015, ie 12 months after the issuance of the freezing order on 24 June 2014, or latest by 10 September 2015, ie 12 months after the issuance of the seizure order on 11 September 2014. Whichever date is to be taken into consideration, the seizure order had ceased to have effect by the time the present originating summons was filed by the appellant.

[16] Since the seizure order had expired by operation of s 52A of the AMLATEPUA and the appellant has not been charged with an offence under the Act or a terrorism financing offence, the appellant's account should have been released on expiration of the seizure order.

[17] In fact, going by s 44(5) of both the AMLATEPUA and the AMLATFA, the appellant's account should have been released earlier, ie on 21 September 2014 (90 days after the issuance of the freezing order on 24 June 2014) and not on 10 September 2015 (12 months after the issuance of the seizure order on 11 September 2014 as prescribed by s 52A).

[18] The second, third and fourth respondents do not in fact dispute that the freezing and seizure orders had expired, but argued that the orders should remain in force, for the following reasons:

(a) the seizure order is valid until otherwise revoked or varied under s 50(1) of the AMLATEPUA;

(b) the appellant's account is the subject matter of an offence committed by the appellant's mother Tan Hoo Eng under s 4(1)(a) of the AMLATEPUA; and

(c) the freezing and seizure orders relate to a criminal investigation and as such could not be reviewed by the court in a civil proceeding: *City Growth Sdn Bhd & Anor v The Government of Malaysia* [2006] 1 MLJ 581; [2005] 7 CLJ 422; *Simplex Sdn Bhd v Mohd Samsol bin Muzer & Anor* [2015] 9 MLJ 78; *R v Sloan* [1990] 1 NZLR 474.

[19] As for the first respondent (CIMB Bank), its answer to the appellant's claim was that it had been advised by the second and third respondents to hold

on to the freezing and seizure orders as there is a criminal proceeding pending against the appellant's mother under the AMLATEPUA and as such the two orders should continue to operate against the appellant's account until after the disposal of the criminal proceeding.

[20] Section 50(1) of the AMLATEPUA, which all four respondents relied on to justify the continued freezing of the appellant's account, reads:

> 50 Seizure of moveable property in financial institution
>
> (1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any movable property or any accretion to it which is —
>
> (a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;
>
> (b) terrorist property;
>
> (c) the proceeds of an unlawful activity; or
>
> (d) the instrumentalities of an offence,
>
> is in the possession, custody or control of a financial institution, he may, notwithstanding any other written law, by order direct that such moveable property or any accretion to it in the financial institution be seized by the investigating officer or by order direct the financial institution not to part with, deal in or otherwise dispose of such movable property or any accretion to it, in whole or in part, until the order is varied or revoked.

[21] CIMB Bank's argument was that unless and until the seizure order is varied or revoked by the public prosecutor, it is in no position to release the appellant's account or to allow him to operate it until further notice by the second and third respondents. The bank's predicament is understandable given the threat of severe penal sanction by s 50(3), which reads:

> (3) Any person who fails to comply with an order of the Public Prosecutor under subsection (1) commits an offence and shall on conviction, be liable to a fine not exceeding five times the amount which was parted with, dealt in or otherwise disposed of in contravention of the Public Prosecutor's order or five million ringgit, whichever is the higher or to imprisonment for a term not exceeding seven years, or to both, and in the case of a continuing offence, shall in addition be liable to a fine not exceeding five thousand ringgit for each day or part thereof during which the offence continues to be committed.

[22] In acceding to the respondents' argument that it is lawful for the respondents to continue freezing the appellant's account despite the expiration of the freezing and seizure orders, the learned judge reasoned as follows:

> [21] I hold further that although the period of twelve (12) months has lapsed and there is no prosecution preferred as yet against the plaintiff, his right to access the

funds in the said frozen and seized account immediate and/or absolute, it is subject always to the order being varied and/or revoked as the case may be (see s 50(1) of the AMLATFA). However, such is not the case here. The court must be slow to interfere with the enforcement matter so as not to interfere in the relevant authorities' investigation and subsequent prosecution of the wrong doer. The power of investigation is the responsibility of the enforcement agency while the Attorney General, has the power to prosecute. The court must not be used as an instrument to derail and/or hamper these two institutions from carrying out their responsibilities in rooting out criminal wrong doings.

[23] With due respect to the learned judge, the reasoning is seriously flawed. Section 50(1) of the AMLATEPUA must not be read in isolation. It must be read together with s 52A. Had the learned judge done so, she would have realised that the public prosecutor's power to vary or revoke the seizure order could only be exercised before the expiration of the order, and not after.

[24] Clearly, once the seizure order had expired by effluxion of time, there is nothing for the public prosecutor to vary or revoke. To hold otherwise would be to violate art 13(1) of the Federal Constitution, which provides that no person shall be deprived of property save in accordance with law.

[25] Courts are not allowed to usurp the function of the Legislature by reading words into the statute. This is familiar law. Suffice it if we cite the case of *Government of Malaysia v Mohamed Amin bin Hassan* [1986] 1 MLJ 224; [1985] 1 LNS 79 where the Supreme Court made the following observations:

In the matter of construction it is well to remember that in *Magor & St Mellons Rural District Council v Newport Corporation* [1952] AC 189 at p 191 the House of Lords has laid down clearly that in construing a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would be to usurp the function of the Legislature. In that case Lord Simonds made this important observation:

> The duty of the court is to interpret the words that the Legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited.

[26] We were referred to s 54(3) of the AMLATEPUA by the respondents for the proposition that since the freezing and seizure orders relate to a criminal investigation, they cannot be reviewed by the court in a civil proceeding. Section 54(3) provides as follows:

(3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceedings of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any

such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the instance of the Federal Government or the Government of a State, or at the instance of the local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

[27] The provision clearly does not apply. The operative words are 'For so long as a seizure of any property under this Act remains in force'. In the present case, the seizure order on the appellant's account is no longer in force as it had expired, the first time on 23 June 2015 (12 months after the issuance of the freezing order on 24 June 2014) and the second time on 10 September 2015 (12 months after the issuance of the seizure order itself on 11 September 2014).

[28] As we indicated earlier, by virtue of s 44(5) of both the AMLATFA and the AMLATEPUA, the freezing order (pursuant to which the seizure order was made on 11 September 2014) had in fact ceased to have effect on 21 September 2014 (90 days after it was issued on 24 June 2014).

[29] It is important to bear in mind that the proceeding in the High Court was not a proceeding to forfeit the monies in the appellant's account. The sole purpose of the proceeding was to determine whether the appellant's account should be released, given the fact that he has not been charged with an offence under the AMLATEPUA after the expiration of the freezing and seizure orders.

[30] Under the AMLATEPUA, there are two situations where seized property 'shall' be forfeited. The first situation is where there is a prosecution for an offence under s 4(1) or a terrorism financing offence. The second situation is where there is no such prosecution. The first situation is regulated by s 55, which reads:

55 Forfeiture of property upon prosecution for an offence

(1) Subject to section 61, in any prosecution for an offence under subsection 4(1) or a terrorism financing offence, the court shall make an order for the forfeiture of any property which is proved to be —

(a) the subject-matter or evidence relating to the commission of such offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence,

where —

(aa) the offence is proved against the accused; or

(bb) the offence is not proved against the accused but the court is satisfied that — A

(i) the accused is not the true and lawful owner of such property; and

(ii) no other person is entitled to the property as a purchaser in good faith for valuable consideration. B

(2) Where the offence is proved against the accused but the property referred to in subsection (1) has been disposed of, diminished in value or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to, in the opinion of the court, the value of the property, and any such penalty shall be recoverable as a civil debt due to the Government of Malaysia and shall not be subject to any period of limitation prescribed by any written law. C

(3) In determining whether the property is — D

(a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or E

(d) the instrumentalities of an offence,

the court shall apply the standard of proof required in civil proceedings.

[31] There is no mention of seized or frozen property in this section but it F provides for mandatory forfeiture of 'any property' if it is proved to be property falling under paras (a)–(d) of sub-s (1). The prerequisite is that there must be a prosecution under s 4(1) or a terrorism financing offence before the court could make a forfeiture order. Section 55(1) expressly provides that a forfeiture order can only be made if the court is satisfied that the requirements of paras (aa) or G (bb) are fulfilled.

[32] The second situation is regulated by s 56, which provides as follows:

56 Forfeiture of property where there is no prosecution. H

(1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply I to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is —

(a) the subject-matter or evidence relating to the commission of such offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence.

(2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied —

(a) that the property is —

(i) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(ii) terrorist property;

(iii) the proceeds of an unlawful activity; or

(iv) the instrumentalities of an offence; and

(b) that there is no purchaser in good faith for valuable consideration in respect of the property.

(3) Any property that has been seized and in respect of which no application is made under subsection (1) *shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized*.

(4) In determining whether the property is —

(a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence,

the court shall apply the standard of proof required in civil proceedings. (Emphasis added.)

[33] Section 56 speaks of forfeiture of 'any property seized under this Act' where there is no prosecution or conviction for an offence under s 4(1) or a terrorism financing offence. The appellant's account falls under this class of properties. However, before the provision is activated, there must first be an application by the public prosecutor for forfeiture of the seized property and the application must be made within 12 months from the date of seizure, failing which sub-s (3) mandates that the property must be returned to the person from whom it was seized. There was no such application by the public prosecutor in the present case.

[34] At first blush, there appears to be a conflict between ss 52A, 55(1) and 56(3) of the AMLATEPUA. Whilst both ss 52A and 56(3) envisage the release of the seized property if no criminal prosecution is instituted within 12 months

from the date of the freezing or seizure order, s 55(1) on the other hand stipulates that where there is a prosecution for an offence under s 4(1) or a terrorism financing offence, the seized property must be forfeited if the requirements are met, that is, if the property is proved to be:

(a) the subject-matter or evidence relating to the commission of such offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity;

(d) the instrumentalities of an offence,

where —

(aa) the offence is proved against the accused; or

(bb) the offence is not proved against the accused but the court is satisfied that —

(i) the accused is not the true and lawful owner of such property; and

(ii) no other person is entitled to the property as a purchaser in good faith for valuable consideration.

[35] Having given the matter careful consideration, we do not think that the effect of s 55(1) is to override ss 52A and 56(3) of the AMLATEPUA. The three provisions cater to two different situations. Sections 52A and 56(3) provide for the release or return of the seized property where there is no prosecution against the person from whom the property was seized, whereas s 55(1) provides for forfeiture where there is a prosecution under section 4(1) or a terrorism financing offence.

[36] The prosecuted person under s 55(1) must necessarily refer to the person from whom the property was seized pursuant to s 50(1) of the AMLATEPUA, who in the present case is the appellant. But the fact is, the appellant has not been prosecuted for an offence under s 4(1) or a terrorism financing offence.

[37] In a situation where the seized property is required to be released to the person from whom it was seized after the expiration of the freezing or seizure order as envisaged by s 52A and upon expiration of the period prescribed by s 56(3), it stands to reason that the property cannot be forfeited by way of a proceeding under s 55(1), that is, by way of a criminal prosecution against *some other person* for an offence under s 4(1) or a terrorism financing offence.

[38] To allow the public prosecutor to do so will be to allow him to ignore and circumvent the limitation period prescribed by both ss 52A and 56(3) of the AMLATEPUA. That will defeat the object behind the two provisions

rather than to put their object into effect, which is for the release or return of the property to the person from whom the property is seized if there is no prosecution against that person for an offence under the AMLATEPUA after the expiration of the seizure order.

[39] Such construction will also render ss 52A and 56(3) otiose, which could not have been the intention of the legislature when enacting the two provisions. It is axiomatic that Parliament does not legislate in vain. In any event, it is trite principle that where there is a conflict between two or more provisions in a statute of this nature, the court must give a construction that is most favourable to the subject.

[40] It bears repeating that in the present case, the appellant was not charged with an offence under s 4(1) or a terrorism financing offence after the expiration of the freezing and seizure orders. It was his mother who was charged with that offence. Nor did the public prosecutor apply for forfeiture of the monies in the appellant's account under s 56(1). Thus, by virtue of s 52A of the AMLATEPUA, the freezing and seizure orders have ceased to have effect. It must follow that the appellant's account must be released on expiration of the orders.

[41] The fact that the appellant's account is the subject matter of a criminal proceeding against the appellant's mother under s 4(1)(a) of the AMLATEPUA is of no consequence as the freezing and seizure orders relate to the appellant's account and not his mother's account, and both orders have ceased to have effect.

[42] Since there is no dispute that the freezing and seizure orders have ceased to have effect, the only issue before the court was whether the appellant's account should be released on expiration of the freezing and seizure orders. Having regard to the provisions of ss 44(5) and 52A of the AMLATEPUA, the answer to the question has to be in the affirmative.

[43] For all the reasons aforesaid, we allow the appellant's appeal with costs, to be borne by the second, third and fourth respondents and payable to the appellant. We set aside the order of the High Court dated 23 May 2017 and we allow prayer (1) of the appellant's originating summons. The deposit is to be refunded to the appellant.

Appellant's appeal allowed with costs; order of High Court set aside.

Reported by Dzulqarnain Ab Fatar